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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1270th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

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GE.98-15594 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Draft concluding observations concerning the eleventh to fourteenth periodic reports of Yugoslavia (CERD/C/52/Misc.39*; future CERD/C/304/Add.50) (continued)

Paragraph 15 (continued)

1. The CHAIRMAN said that a new version of the second and third sentences of paragraph 15 had been agreed upon, which he asked Mr. Rechetov to read out.

2. Mr. RECHETOV (Country Rapporteur) said that the new version of the second and third sentences read as follows: "Although the State Party has argued that its recent actions in Kosovo and Metohija were carried out exclusively with a view to combating terrorism, the Committee notes with serious concern that a great number of victims of the recent events are civilians, including women and children, whose deaths cannot be justified by any means. It states that any attempt to push for a military solution of the long-standing crisis in Kosovo could have disastrous consequences".

3. If the new version of paragraph 15 met with the Committee's approval, it would then be possible to delete the last sentence in paragraph 21, which read: "It considers that any action against terrorist groups should be proportionate to the aim sought and not represent a risk for those not directly involved in terrorist acts".

4. The CHAIRMAN said that the Committee could deal with Mr. Rechetov's last suggestion when it took up paragraph 21.

5. Paragraph 15, as amended, was adopted.

Paragraph 16

6. Mr. van BOVEN proposed that the last phrase of paragraph 16 ("nor tried before Yugoslav domestic courts") should be deleted. The paragraph would then read: "It is regretted that the cooperation of the State Party with the International Criminal Tribunal for the former Yugoslavia remains insufficient and that individuals indicted for war crimes and crimes against humanity are not put at the disposal of the Tribunal." As it stood, the text gave the impression that once an indictment was made and an arrest warrant issued, the Government of Yugoslavia would still have the option either to transfer the indicted person to the Tribunal or to try the person itself before its domestic courts. The statute of the Tribunal provided for no such choice: when the Tribunal issued an indictment, the authorities concerned were under

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an obligation to hand over the indicted person and could not - and that was the position of the United Nations and the Secretary-General - invoke domestic constitutional reasons for refusing to do so.

7. A separate sentence on the trial of persons before domestic courts could then be inserted elsewhere.

8. Mr. de GOUTTES endorsed Mr. van Boven's proposal since the object of the paragraph was cooperation with the International Criminal Tribunal. In accordance with the Commitee's usual practice, a request could be inserted in another paragraph asking the State Party to provide the Committee with information on prosecution before its domestic courts of offences relating to the implementation of the Convention.

9. Mr. RECHETOV (Country Rapporteur) referred Mr. de Gouttes to paragraph 22, which also concerned cooperation with the tribunal. It might be preferable to avoid the repetition.

10. On the point raised by Mr. van Boven, he said that in his opinion, the Security Council resolution establishing the International Criminal Tribunal for the former Yugoslavia did not prevent domestic courts from prosecuting persons for war crimes and crimes against humanity.

11. Mr. van BOVEN said that of course it was also assumed that national authorities would prosecute and try such persons. The International Criminal Tribunal could only try a limited number of cases. It did not necessarily replace domestic courts. But once the Tribunal had conducted an investigation, indicted someone and claimed jurisdiction - and, as he interpreted it, the phrase "individuals indicted for war crimes and crimes against humanity" meant that such indictments had been issued by the Tribunal - the State Party could not refuse to recognize the Tribunal's arrest warrant or to hand over the individual on the grounds that it was conducting the prosecution itself. In such instances, the Tribunal had primary jurisdiction, as the Secretary-General had stressed in his long-standing exchange of letters with the Government of Yugoslavia. The Committee should not take a different line.

12. Paragraph 22 was satisfactory as it stood. In its discussions, the Committee had moreover regretted that there had been hardly any cases, perhaps only one, tried by the domestic courts.

13. Mr. YUTZIS said that he supported Mr. van Boven's proposal, which was a faithful reflection of the discussion in the Committee.

14. Mr. RECHETOV (Country Rapporteur) said that he had no objection to the deletion proposed, but for clarity's sake, the words "by this Tribunal" should then be inserted between "indicted" and "for war crimes".

15. Paragraph 16, as amended, was adopted.

Paragraph 18

16. Mr. SHERIFIS said that the same wording should be used as had been agreed on that morning in the concluding observations on Ukraine, namely: "The Committee recommends that the State Party take all appropriate measures to ensure education and teaching in the mother tongue of minorities wherever possible".

17. The CHAIRMAN noted that that proposal weakened the text.

18. Mr. GARVALOV proposed that the word "all" should be inserted in the first line between "full enjoyment by members of" and "minorities". That would make it more consistent with the text of paragraph 10 ("Concern is expressed about continuous reports indicating that, despite constitutional and legal safeguards, access of certain minorities to education, public information and cultural activities in their own language is not fully guaranteed").

19. Mr. DIACONU said that paragraph 10 spoke of "access to education" in the mother tongue, whereas paragraph 18 referred to "full enjoyment" of the right to education in the minorities' own language. "Enjoyment" meant that the State was under an obligation to create schools for everyone, whereas "access to" suggested that the schools were open to those who wished to attend them. He proposed the following text: "Efforts should be pursued in order to guarantee full enjoyment by members of all minorities of their rights to public information and cultural activities, as well as to education, wherever possible, in their own language". That would introduce a more flexible formulation for the idea of education in the mother tongue - which could not realistically be guaranteed for everyone - while allowing for the right to full enjoyment of public information and cultural activities. He did not have in mind the Albanians in Kosovo alone: there were Albanians in other areas, and there were other minorities as well.

20. Mr. BANTON supported Mr. Diaconu's proposal.

21. Mr. GARVALOV pointed out that Yugoslavia was a special case. The Committee could not use the same language as for Ukraine, because that was a different case. He did not want one particular minority in Yugoslavia being denied the use of its language in schools while other minorities enjoyed that right. Thus, the proposed phrase "wherever possible" was unacceptable to him, because it seriously weakened the text.

22. The CHAIRMAN, speaking in his capacity as a member of the Committee, said that he was inclined to agree with Mr. Garvalov.

23. Mr. BANTON noted that that was an issue in his own country as well. How many Welsh speakers did there have to be in a community before the educational authorities were required to provide Welsh medium schooling? It was a practical problem, involving the use of limited funds in the education budget. He did not think that the Committee could say that a State must provide education in the mother tongue when there was only a very small number of children whose parents wished them to benefit from it. Some clause such as "wherever possible" or "wherever practical" was inevitable.

24. Mr. GARVALOV said that he was willing to go along with Mr. Diaconu's proposal, but wished to have it placed on record that he was referring to one particular minority in Yugoslavia, the Bulgarian, and that he had made it clear to the delegation of the State Party that that minority was not given the same treatment in respect of education in the mother tongue as the other minorities in that country.

25. Paragraph 18, as amended, was adopted.

Paragraph 21

26. The CHAIRMAN recalled that during the discussion of paragraph 15, there had been a proposal by Mr. Rechetov to delete the second sentence.

27. Paragraph 21, as amended, was adopted.

Paragraph 22

28. Mr. RECHETOV (Country Rapporteur) suggested inserting the phrase "by the Tribunal" between "handing over those indicted" and "for war crimes and crimes against humanity", much in the same way as had been done in paragraph 16.

29. Paragraph 22, as amended, was adopted.

30. The CHAIRMAN invited the Committee to resume its consideration of paragraph 8, no decision having been taken on whether to delete the second sentence.

Paragraph 8

31. Mr. RECHETOV (Country Rapporteur) said he viewed it as an important sentence and suggested that it should be moved to section E (Suggestions and recommendations) and reworded in such a way as to advocate a change in the status of Kosovo that would improve the existing circumstances of the population. Whether to call for greater autonomy was a moot point but the idea of creating a framework for greater enjoyment of human rights should be maintained.

32. Mr. DIACONU pointed out that autonomy was merely a tool for the achievement of human rights. He proposed the deletion of paragraph 8 and the insertion of the following paragraph in section E after paragraph 19: "The Committee expresses the hope that a solution for Kosovo and Metohija could include a status of autonomy for this part of the State Party as a means of better enjoyment of human rights by everyone."

33. Mr. RECHETOV (Country Rapporteur) said he could go along with Mr. Diaconu's proposal if "expresses the hope" was amended to read "expresses the opinion".

34. Mr. SHERIFIS suggested that a working group should be established to draft an acceptable formula. He was in favour of including a reference to General Recommendation XXI.

35. Mr. GARVALOV said that the generally held view among Kosovo Albanians was that they had been robbed of their autonomy and could therefore settle for nothing short of independence. The Committee must face up to that fact. The least it could do was to encourage the State Party to use all available means, including autonomy, to resolve the situation in Kosovo and Metohija in such a way as to ensure better enjoyment of human rights by everyone. Even wording along those lines would fail to do justice to the legitimate demands of the Kosovo Albanians.

36. Mr. BANTON agreed with the suggestion to insert a new paragraph after paragraph 19. He proposed the following wording which referred to existing attempts by such bodies as the Organization for Security and Cooperation in Europe (OSCE) and the European Union to assist in negotiating a solution: "The Committee recommends that the State Party, in consultation with others, seek a solution for Kosovo and Metohija which includes a status of autonomy for this part of the State Party as a means of better enjoyment of human rights by everyone."

37. The CHAIRMAN, speaking in his personal capacity, said he was reluctant to advise any State Party to involve other bodies in seeking a solution to its difficulties. He was, however, willing to advocate autonomy in the strongest terms.

38. Mr. de GOUTTES said that, in their dialogue with the State Party, the six countries of the Contact Group had repeatedly ruled out both independence and maintenance of the status quo and had advocated instead "a higher degree of autonomy". He could support Mr. Diaconu's proposal if the words "a status of autonomy" were replaced by "a higher degree of autonomy".

39. The CHAIRMAN, speaking in his personal capacity, said he would prefer "a high degree of autonomy".

40. Mr. YUTZIS said he was unable to accept any wording that was inconsistent with General Recommendation XXI or that undermined the case for recovery of lost autonomy. He was inclined to opt for the wording "a higher degree of autonomy" proposed by Mr. de Gouttes.

41. Mr. SHAHI said it did not make sense to advocate a "higher degree" of autonomy if the ethnic Albanians had been deprived of their autonomy. He suggested a reference to "recovery of a status of autonomy". He also proposed that the word "better" before "enjoyment of human rights" should be deleted.

42. Mr. DIACONU said that the Committee could not advocate the restoration of the status of autonomy that had existed in the former Yugoslavia. States Parties were under no obligation to grant autonomy: they could only be encouraged to use it as a means of guaranteeing enjoyment of human rights. What he meant by a "status of autonomy" was a document concluded with the minority concerned and having formal international status.

43. The CHAIRMAN asked whether the Committee wished to act on Mr. Sherifis' proposal to establish a working group to draft a compromise text.

44. It was so agreed.

Draft concluding observations concerning the initial and second periodic reports of the Czech Republic (CERD/C/52/Misc.31*, Future/CERD/C/304/Add.47)

Paragraph 11

45. Mr. DIACONU (Country Rapporteur), replying to a question by the CHAIRMAN, said that the political party mentioned in paragraph 11 indeed existed and that no action was taken against it for political reasons. The State Party had not denied its existence.

46. Mr. GARVALOV said that the existence of such a party was a violation of article 4, a point he had made during the discussion of the State Party's report.

47. Paragraph 11 was adopted.

Paragraph 13

48. Mr. DIACONU (Country Rapporteur) said that "article 7" in the fourth line should read "article 5".

49. Paragraph 13, as amended, was adopted.

Paragraph 16

50. Mr. DIACONU (Country Rapporteur) said that paragraph 16 was the result of an error and should be deleted.

51. Paragraph 16 was deleted.

Paragraph 17

52. Mr. GARVALOV proposed replacing the word "individuals" in the third line by "persons".

53. Paragraph 17, as amended, was adopted.

Paragraph 19

54. Mr. DIACONU (Country Rapporteur) said that the word "among" in the last sentence should be replaced by "and".

55. Paragraph 19, as amended, was adopted.

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Paragraph 24

56. Mr. DIACONU (Country Rapporteur) taking up a suggestion by Mr. van BOVEN, proposed that the end of the paragraph should be expanded to read "... adolescents in institutions, in particular members of the Roma community.".

57. Paragraph 24, as amended, was adopted.

58. The draft concluding observations concerning the initial and second periodic reports of the Czech Republic as a whole, as amended, were adopted.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 12) (A/52/18; A/52/471; A/52/528; General Assembly resolutions 52/111 and 52/109; E/1997/87; E/CN.4/1997/68/Add.1; E/CN.4/1998/77/Add.1 and Add.2)

59. Mr. BANTON, referring to paragraph 667 of the Committee's report to the fifty-second session of the General Assembly (A/52/18) and Commission on Human Rights resolution 1997/74, said that, on the Committee's instructions, he had sent a letter to the United Nations Secretary-General and the Chairman of the Commission on Human Rights containing a list of subjects on which specialist reviews might be prepared by the Committee as a basis for the work of the proposed world conference on racism and racial discrimination, xenophobia and related intolerance. He had received a fax from the Executive Office of the Secretary-General dated 16 October 1997 referring to arrangements for the appointment of a preparatory committee for the conference. It was anticipated that the chairman of the preparatory committee would collaborate with the Chairman of the Committee on the preparation of the world conference. The communication closed with an assurance that the conference would take full account of the information accumulated by the Committee. He trusted that the Committee would invite the Chairman to seek further information on developments with respect to the preparatory committee and the Committee's role in that context.

60. Also under the heading of the Third Decade to Combat Racism and Racial Discrimination, he drew attention to a report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/52/471). Paragraph 42 was of special interest to the Committee in connection with its consideration of the next periodic report of Brazil. He also drew attention to General Assembly resolution 52/111, in particular paragraph 30 concerning the Committee's role in assisting the preparatory committee for the world conference, and General Assembly resolution 52/109 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

61. Mr. NOBEL urged the Committee to initiate formal or informal discussions as soon as possible on active involvement in the preparations for the world conference on racism and racial discrimination, xenophobia and related intolerance. If it waited until the whole process had been set in motion, it ran the risk of being marginalized. Furthermore, it would be a shame to deprive the world conference of the Committee's unique experience and expertise. He suggested that the Committee should organize a half-day seminar for representatives of permanent missions to draw attention to its achievements and potential in the fight against racial discrimination.

62. The CHAIRMAN said that General Assembly resolution 52/111 was quite clear: the General Assembly established the Commission on Human Rights as the preparatory committee for the world conference, and also requested Governments, the Committee and other human rights mechanisms "to assist the preparatory committee, to undertake reviews and submit recommendations concerning the conference and the preparations therefor to the preparatory committee tnrough the Secretary-General". The Committee could not go further than the tasks assigned to it in the resolution.

63. Ms. McDOUGALL said she had met representatives of all the bodies participating in preparations for the conference and had concluded that any group that decided to marshall its energy to participate in a proactive way and create the necessary momentum could play a role not just of assistance but of leadership, which would be welcomed both by the Secretariat and by the Commission, since no major moves had as yet been made. She agreed with Mr. Nobel that the conference would be a centrepiece of United Nations action in the Third Decade, and the Committee must play a central role and begin to fashion that role immediately. It should consider setting up a working group without delay to initiate liaison with the preparatory committee, before the end of the current session.

64. The CHAIRMAN said that the Committee was still completely in the dark about developments in the preparatory process. In order to be of assistance and consider follow-up action, it must take part in the work of the preparatory committee. He foresaw difficulties in obtaining the necessary information in the time available.

65. Ms. McDOUGALL said that the working group she was proposing would represent a first step in that direction.

66. Mr. van BOVEN said that, as the work of the Committee was not at all known and its position within the United Nations was marginal, the world conference would offer a good opportunity to put the Committee on the map. The Committee should be more aggressive and should not simply wait to be invited; it should make its availability known. He agreed with Mr. Nobel and Ms. McDougall.

67. Mr. SHAHI said that despite the fact that the Committee was the key body concerned with the elimination of racial discrimination, it was simply being asked to assist other bodies and was allowing itself to be reduced to a marginal role on questions concerning racism. The Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance was taking the lead and, although his work was valuable, he did not have the experience of evaluating State Party compliance with the Convention. In the time remaining at the session, the Committee should concentrate on the conference, subject of course to the conclusion of its consideration of urgent situations such as Yugoslavia and Rwanda.

68. At its fifty-first session the Committee had already drawn attention to the two seminars organized as part of the preparatory process, one on immigration and the other on the role of the Internet in the dissemination of racist ideas. A joint working paper on article 7 of the Convention was being

prepared by Mr. Garvalov and Mrs. Sadiq Ali in conjunction with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, but that would not represent sufficient input from the Committee. The Internet was bound to play a leading role in disseminating racist propaganda, as it was cheap and widely accessible; the Committee should take further action on that subject. As Mr. Diaconu had said at the previous session, "the proposed world conference would provide an opportunity for the Committee to emerge from the shadows. To do so, it would certainly have to participate in the work of the preparatory committee, but should above all submit a comprehensive report on minorities, immigrants, foreigners and indigenous peoples (...) from the standpoint of the International Convention on the Elimination of All Forms of Racial Discrimination, and especially on the basis of the reports submitted by Governments. In view of the number of reports submitted, that would be an enormous task, for which the Committee could request support from the Secretariat" (CERD/C/SR.1244, para. 37).

69. He had been designated by the Committee as its representative on the preparatory committee for the World Conference on Human Rights, when the Committee had played a role in persuading the other human rights treaty bodies to develop early warning measures and urgent action procedures.

70. Mr. de GOUTTES said he supported Ms. McDougall's proposal for creating a working group that could make contacts before the end of the current session and define the Committee's specific role in preparing for the world conference. It would also have the advantage of affirming the Committee's presence in a field in which it had not been given the prominence it deserved. In addition to the ideas proposed on discrimination and the Internet and the study on article 7, there was also the important topic of racial or ethnic discrimination in the private sector, in such fields as housing, employment and trade.

71. The CHAIRMAN said that members of the Committee had produced a large number of studies over the years which could contribute to the conference. In the meantime, however, the Committee needed to be informed of the stage reached in the preparatory process. In addition to the proposed working group, perhaps a member of the Committee could attend the meetings of the preparatory committee, to secure such information, notably with regard to the financial aspects of the conference.

72. Mr. SHERIFIS asked whether the date and venue of the conference had been established. The General Assembly had in fact acknowledged a role for the Committee, in undertaking reviews and submitting recommendations and also in participating actively in the conference; the Committee should play not just an active but a protagonistic role, which was its rightful role, and it should participate in the work of the preparatory committee. The conference should be a priority item on the agenda of the Committee's August 1998 session.

73. Ms. McDOUGALL said that one of the tasks of the proposed working group would be to secure answers to the Committee's various questions and report back to the Committee, by the last day of the session at the latest.

74. Mr. YUTZIS said there seemed to be a consensus on the proactive role the Committee should play in preparing for the conference, although its specific

contribution to the conference itself remained to be determined. Little had been done so far and, as Ms. McDougall had said, all initiatives would certainly be welcome.

75. Mr. BANTON recalled that the conference was being held as part of the Third Decade, and that the opening statement in the Programme of Action for the Decade had originated with the Committee. That statement, which was of considerable importance, indicated that the most important steps towards the fulfilment of the Decade's objectives would be those taken by States Parties within their own jurisdictions. A number of people and bodies wanted to see the conference agenda as a matter for States' foreign policy, but that statement prioritized States' domestic policies. Who was better placed than the Committee to comment on those domestic policies? That should be the basis of the Committee's claim for a prominent role in the preparation of the conference.

76. The Committee should have an open-ended working group, which would have to work by correspondence after the close of the current session. It members would need to look closely at the Commission on Human Rights resolution containing the proposed conference objectives, which were more focused than those of either of the two previous world conferences on the subject. Participants in the working group might benefit from a Secretariat document setting out the key decisions already taken in respect of preparations for the conference.

77. The CHAIRMAN said the preparatory committee would be drafting a document for presentation at the conference, where it would be discussed and possibly amended. The Committee should ascertain where it could make an effective contribution within that machinery.

78. Mr. GARVALOV suggested that the Chairman should send a letter to the High Commissioner for Human Rights and the Chairman of the Commission advising them that the Committee had debated the issue and requesting them to associate the Committee as closely as possible, through one of its representatives, with the sessions of the preparatory committee. As to the conference agenda, it was high time the Committee went on record as making it clear to States Parties that one of the biggest problems the Committee and the international community faced in combating racial discrimination was that of compliance with their obligations under the Convention.

79. Mr. SHAHI agreed that the composition of the working group should be open-ended. He supported Mr. Garvalov's suggestion that a letter should be sent to the High Commissioner for Human Rights and the Chairman of the Commission on Human Rights at its fifty-fourth session indicating the Committee's interest in participating, through one of its representatives, in the preparatory work for the world conference. Such a letter might say that, as the primary role in implementing the International Convention on the Elimination of All Forms of Racial Discrimination was played by States, the experience gained by the Committee in considering reports by States Parties, and preparing General Recommendations enabled it to make a distinctive contribution to achieving the ends of the world conference.

80. Mr. RECHETOV said that in preparing for the world conference, the Committee should not lose sight of its main task. It must make the most of the time that remained at its session and not leave any draft concluding observations pending, which would set a bad precedent.

81. The CHAIRMAN said that Mr. Rechetov had made an important point. If the Committee were to concentrate on the world conference and neglect its own work it would be accomplishing nothing. As what was most needed at the current stage was information, he suggested that a contact group of three members should be established to collect information on the preparations for the world conference and report to the Committee, with suggestions on the Committee's contribution, at its 1273rd meeting. An open-ended working group would then be established. He suggested that the contact group should comprise Mr. Garvalov, Ms. McDougall and Mr. Yutzis and be chaired by Mr. Garvalov. If he heard no objection, he would take it that the Committee agreed.

82. It was so decided

83. The CHAIRMAN said he would ask the secretariat, in coordination with Mr. Banton, to prepare two letters based on Mr. Garvalov's proposal, to be signed and dispatched before the end of the current session. The letters would be brief and simply express the Committee's willingness to participate in the preparations for the world conference. He would also raise the question with the High Commissioner for Human Rights, whom he was due to meet the following day.

84. Mr. BANTON drew attention to three remaining documents in connection with the Third Decade: E/1997/87, in particular paragraph 41, E/CN.4/1997/68/Add.1 and E/CN.4/1998/77/Add.1, in particular paragraphs 35 and 39.

85. The CHAIRMAN said that, save for its discussions of the reports of the seminar on immigration, racism and racial discrimination (E/CN.4/1998/77/Add.1) and the seminar on the role of Internet with regard to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/1998/77/Add.2), to which it would return if time permitted, the Committee had concluded its consideration of agenda item 12.

The meeting rose at 6 p.m.